

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

Nos. 00-2159/2787

Richard G. Kelley,	*	
	*	
Appellant,	*	
	*	Appeals from the United States
v.	*	District Court for the
	*	Western District of Arkansas.
E-Z Mart Stores, Inc.; Larry Lewis,	*	
Individually and in his official capacity	*	[UNPUBLISHED]
as District Supervisor for E-Z Mart	*	
Stores, Inc.,	*	
	*	
Appellees.	*	

Submitted: May 2, 2001
Filed: May 7, 2001

Before BOWMAN, BEAM, and LOKEN, Circuit Judges.

PER CURIAM.

Richard G. Kelley appeals the District Court's¹ adverse grant of summary judgment, and its denial of his related reconsideration motion under Federal Rule of Civil Procedure 60(b), in his employment- discrimination action brought under Title VII

¹The Honorable Bobby E. Shepherd, United States Magistrate Judge for the Western District of Arkansas, to whom the case was referred for final disposition by consent of the parties pursuant to 28 U.S.C. § 636(c).

of the Civil Rights Act of 1964, 42 U.S.C. § 2000-e2 (1994), and 42 U.S.C. § 1981 (1994). Kelley had alleged that in retaliation for filing a January 21, 1998 Equal Employment Opportunity Commission charge of unequal pay based on gender and race, defendants terminated him on January 28, 1998.²

Having carefully reviewed the record and the parties' briefs, see Stuart v. Gen. Motors Corp., 217 F.3d 621, 630 (8th Cir. 2000) (standard of review), we conclude that the District Court properly granted summary judgment to defendants. Kelley failed to meet his burden of creating a genuine issue of fact as to whether defendants' proffered nondiscriminatory reason for his termination was pretextual, see Scroggins v. Univ. of Minn., 221 F.3d 1042, 1045 (8th Cir. 2000), and nothing else in Kelley's submissions persuades us that summary judgment was improper. The District Court also did not abuse its discretion in denying Kelley's Rule 60(b) motion, see Sanders v. Clemco Indus., 862 F.2d 161, 169 (8th Cir. 1988) (standard of review).

We decline to consider Kelley's recusal arguments, as we previously considered and denied his related petition for a writ of mandamus, and we deny his pending motion.

Accordingly, we affirm. See 8th Cir. R. 47B.

²Kelley also asserted a wage discrimination claim, which was disposed of on summary judgment, and a state-law defamation claim, which was dismissed without prejudice. He has not addressed these claims in his initial or reply briefs. See Mahaney v. Warren County, 206 F.3d 770, 771 n.2 (8th Cir. 2000) (per curiam) (concluding that claims not raised in initial brief are waived).

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.